

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

In The
SUPREME COURT OF THE UNITED STATES

MICHAEL M. KENNEDY,
Petitioner

v

GRATTAN TOWNSHIP, MICHIGAN
Respondent

Petition For A Writ Of Certiorari
To The Michigan Supreme Court

PETITION FOR WRIT OF CERTIORARI

By:
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QUESTIONS

1. Whether the US Constitution and common law protects pro se appellant from erroneous state appellate court summary decision stating "application for leave to appeal is DENIED for *lack of merit* (emphasis added) in the grounds presented" where the clerk refused to file reply brief, no briefing or oral arguments were made on the merits and no fact or authority was cited and only 21 days were allowed to appeal? And, if not, what standards must state appellants by leave meet to gain acceptance and a full, fair, just decision on the merits?
2. Does it violate the intent of *Brady v Maryland* for state subdivisions to withhold information regarding the ordinance not being properly enacted and/or repealed prior to trial resulting in an unjust conviction?
3. Whether judicial bias is evident from the record where the trial judge refused to allow motion to dismiss based on lack of oath and repeal of the ordinance to be fully, fairly or justly heard before trial and other acts?
4. Whether Michigan contempt statute is unconstitutional on its face and/or as applied to Petitioner while representing himself and speaking in his own defense, as is his privilege under the 1st and 14th Amendments and state constitution?

(Note: 28 USC sec 2403(b) may apply. Rule 29(4)(c))

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Michael M. Kennedy, respectfully requests that this Court grant the petition for writ of certiorari to review the denial of review by the Michigan Supreme Court (#127410) and Michigan Court of Appeals (#254808), and decisions of the Kent County Circuit Court (02-010932-AV) and Kent Co. District Court (RO1A0119). The denial of review and rehearing by the Michigan Supreme Court are likely the only ones published.

OPINIONS BELOW

The Michigan Supreme Court denied leave to appeal on May 31, 2005. (App A, p 1) They denied Petitioners motion for rehearing on August 30, 2005. (App B, p 2) The Michigan Court of Appeals had denied leave to appeal on August 19, 2004, (App C, p 3) and denied rehearing on Oct. 4, 2004. (App D, p 4) A Michigan Court of Appeals assistant clerk refused to file Petitioners reply brief urging acceptance on appeal by leave. (App E, p 5)

The Kent County Circuit Court on appeal issued a written Opinion denying Petitioner relief on every issue raised. (App F, p 6) On motion for rehearing requesting that the Court address the undecided issues raised in the appeal reply brief and supplemental brief, it issued a second written Opinion again denying every issue raised. (App G, p 10)

The trial was held on Sept. 12, 2002, but no written decision was issued then. The Kent Co. District Court filed a written order on Sept. 27, 2002. (App I, p 19)¹ A judgment finding Mr. Kennedy guilty and fining him \$500 and \$500 costs and ordering him to clear his property was issued on October 10, 2002. (App J, p 21)

Due to deliberate withholding of evidence and information prior to trial by Respondent, Mr. Kennedy, via his attorneys, had to file a *separate* state Freedom of Information Act (FOIA) suit in Kent County Circuit Court in an attempt to discover exculpatory evidence and other

¹ See footnote 8.

evidence helpful to his defense. See *Brady v Maryland*, 373 US 83 (1963) Well after the trial, the Kent County Circuit Court ordered the Township to provide the exculpatory information requested. The decision is attached as Appendix H, p 16.

JURISDICTION

Petitioner believes the jurisdiction of this Court rests in 28 USC 1257, regarding review of state court decisions, and Rule 10(b & c) of the Rules of the Supreme Court of the United States (2003). The Michigan Supreme Court denied leave on May 31, 2005 (App A, p 1) and rehearing on August 30, 2005. (App B, p 2) Justice Stevens granted extension of time to and including January 27, 2006. (App L, p 26)

RELEVANT PROVISIONS

SUPREMACY CLAUSE Article VI, cl 2.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

1ST AMENDMENT

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably to assemble, and to petition the Government for redress of grievances.

5TH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service

in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

9TH AMENDMENT

The emuneration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

14TH AMENDMENT

Section 1. (in relevant part) No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CONTEMPT STATUTE, MCL 600.1701 et seq.

MCL 600.1701 The supreme court, circuit courts, and all other courts of record, have power to punish by fine or imprisonment, or both, persons guilty of any neglect or violation of duty or misconduct in all the following cases:

(a) Disorderly, contemptuous, or insolent behavior,, committed during its sitting, in its immediate view and presence, and directly tending to interrupt its proceedings or impair the respect due to its authority.

MCL 600.1711 (1) When any contempt is committed in the Immediate view and presence of the court may punish it summarily by fine, or imprisonment, or both.

MCL 600.1715 (1) Except as otherwise provided by law, punishment for contempt may be by fine of not more than \$250, or imprisonment which, except in those cases where the commitment is for the omission to perform an act or duty which is still within the power of the person to

perform shall not exceed 30 days, or both, in the discretion of the court.

Ord. 1 (Petitioner is not sure what it states, or whether it is relevant, since it was not properly enacted and was repealed before trial and never entered.)

STATEMENT OF THE CASE

This is a case of actual innocence for several reasons that will become apparent. There are no health, safety, or welfare issues or evidence. It is also an abuse of property rights, and other rights, case that deserves this Courts attention.

Mr. Kennedy, and his parents before him, have owned 50+ arces of property in Grattan Township, Kent County, Michigan since the 1930's and Mr. Kennedy has lived there since 1946. (Trans 1-17-03, p 9) It is an agricultural area, specifically, a small rural farm and woodlot on a seldom traveled dirt road. They have for most of these years stored farm equipment, pick-up trucks, semi-tractors, trailers, motor homes, recreational vehicles, cars, etc. related to their work and recreation outside of buildings - enjoying and utilizing the Liberties of Property (14th Am.) they have been granted by the Declaration of Independence, United States and Michigan Constitutions.

Grattan Twp. contends it passed a zoning ordinance prohibiting such outside storage sometime in the 1970's (Ordinance 1).² But, if true, they did not seek to enforce it until 2001 when they hired a Zoning Enforcement Officer, named Mr. Munson. Mr. Kennedy was issued a civil infraction³ ticket by Mr. Munson for storing vehicles outside of a building.

² Note: The ordinance was never admitted to the record, that Petitioner is aware of.

³ Civil infractions are a new quasi-criminal creation of both the state and local legislators - not authorized by the state constitution. Civil infractions under Michigan law severely

Petitioner raised many issues in his defense before trial, both *pro se* and with an attorney, but has been thwarted at every turn by judicial bias in favor of the local government. Initially, Kennedy contended he, at the least, had an existing non-conforming use. This argument was ignored by the district judge. On appeal the Circuit Court ruled that he did not have a non-conforming use existing before the Ordinance was supposedly enacted. (App F, p 7) However, the court admits that aerial photos show vehicles stored on the property as far back as 1978. (Id.) Therefore, the ruling is questionable.

Some of the other issues raised are evident from the Circuit Court decisions which denied all relief on appeal by right (App F, p 6; App G, p 10) and from the questions addressed to the Michigan Supreme Court on p 10-11 here. At least 13 issues were raised and addressed. (Some of them are addressed later.) Petitioner also had to file a separate FOIA lawsuit in the Circuit Court to secure information deliberately withheld by Township officials. A decision in that case was not issued until after the trial. (App H, p 16) It was not appealed.

Petitioner then appealed to the Michigan Court of Appeals by leave, which is the only way allowed despite the magnitude of the issues presented. (MCR 7.203(B)(2). Only a short 21 days is allowed to appeal by leave (MCR 7.205(A)) and that includes preparation of the brief and all other actions required, plus attempting to find cases that could reverse the court appealed from. MCR 7.205

Suprisingly, the clerk refused to file Petitioners reply brief based only on the rules not expressly allowing one -nor forbidding one.⁴ (App E, p 5) Furthermore, reply briefs are

limit ones constitutional rights. Example: forbid jury trials, force one to testify against himself, etc. Nothing is *civil* about it.

⁴ Petitioner suspects that the Respondent's attorney had an *ex-parte* discussion with the assistant clerk, since they

accepted in lower federal courts and have been accepted in this Court routinely.

The Court of Appeals refused to accept the case, but ruled at the same time that the appeal was "DENIED for lack of merit in the grounds presented." (App C, p 3) That is at least questionable, and in Petitioner's opinion, totally false.

Petitioner sought rehearing on 3 grounds. Challenged the court clerks authority to deny filing Petitioners reply brief raising First Am. and Due Process issues. He challenged the error concerning the Court's statement that it was a delayed leave to appeal on Due Process grounds. And, most importantly challenged the no merits decision. Petitioner argued in the short time allowed that the Court could not rule on the merits without accepting the case and providing other Due Process on federal grounds citing federal cases. The Court denied rehearing. (App D, p 4)

Petitioner appealed by leave to the Michigan Supreme Court raising numerous questions, including questions about the court of appeals ruling on the merits, refusing the reply brief, and challenges to the lower court rulings. See questions below on p 10-11.

Since none of the questions were addressed by either the Michigan Supreme Court or MCOA, how they were raised in the Circuit Court or District Court is addressed in the sections below that argue for granting the petition questions.

previously had taken this tactic to attempt to stop consideration of Petitioner's reply brief in Circuit Court in writing. In support of this possibility, Petitioner notes that his Reply Brief seeking leave to appeal to the Michigan Supreme Court was accepted and filed on 12-27-2004 by its Clerk, Corbin Davis. Petitioner believes it was an underhanded means of restricting his speech in court. A successful one.